

FILED

NOV 03 2009


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

GARY MYERS,

Plaintiff,

vs.

SNAKE DEN LODGE, LLC, and
CORDIE SCHLOMER,

Defendants,

CIV: 09-3026

COMPLAINT

NOW COMES Plaintiff, Gary Myers, by and through his attorney of record, and for his Complaint and causes of action against the above-named Defendants, does hereby state and allege as follows:

PARTIES

1. Plaintiff Gary Myers is a resident of Duluth, Gwinnett County, Georgia, and has been at all times material hereto a resident of the State of Georgia.

2. Defendant Snake Den Lodge, LLC, is a corporation existing under the laws of the State of South Dakota with its principal place of business in Lyman County, South Dakota, and provides hunting guide services.

3. At all times material hereto, defendant Cordie Schlomer was acting within the scope and course of his employment/agency for defendant Snake Den Lodge, L.L.C.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332 as complete diversity exists between the parties. Plaintiff is a resident of the State of Georgia and Defendants are residents of the State of South Dakota.

5. The amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars (\$75,000.00).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). A substantial part of the events or omissions giving rise to this claim occurred in this district. Defendant Snake Den Lodge, L.L.C. provides hunting guide services in the State of South Dakota, and as such has purposely availed itself of the privileges of conducting activities within the State of South Dakota.

FACTUAL ALLEGATIONS

7. Snake Den Lodge, L.L.C., is a hunting guide operation and performs guided pheasant hunting services for its guests near Presho, Lyman County, South Dakota.

8. On November 7, 2006, Plaintiff Gary Myers was a guest of Snake Den Lodge, L.L.C., and was then hunting with a group of approximately fifteen other hunters, Defendant Schlomer, and an assistant guide.

9. On November 7, 2006, immediately prior to the subject accident, Plaintiff Gary Myers was designated to be a “blocker” on a particular field, and was being transported in the bed of a pickup truck then operated by Defendant Schlomer, and owned by Defendant Snake Den Lodge, L.L.C.

10. Defendant Schlomer instructed the blockers in the truck to “get out when I stop the truck”.

11. Near the end of the field to be hunted, Defendant Schlomer turned and stopped the truck. Plaintiff was sitting on the dog kennel in the bed of the pickup, and was plainly visible to Defendant Schlomer. At that time, Plaintiff got up and stepped over the tailgate with his left leg and onto the bumper, with his shotgun in his left hand and his right hand on the tailgate for stability. Plaintiff’s right leg and foot were still in the bed of the truck when suddenly, and

without warning, Defendant Schlomer accelerated forward, flipping Plaintiff over the tailgate and out of the truck. Plaintiff landed on his head and right shoulder, and his right leg and knee were severely twisted in the accident.

12. Defendant Schlomer was negligent and careless all of which directly caused the injuries to Plaintiff Gary Myers. His negligence was the legal cause of the injuries sustained by Plaintiff.

COUNT ONE - NEGLIGENCE

13. Plaintiff incorporates by reference each and every paragraph set forth herein.

14. Defendant Schlomer was negligent in the following manner:

- a. failing to keep a proper lookout;
- b. failing to wait for and confirm that Plaintiff had safely exited from the bed of the pickup truck before moving the truck forward, when in the exercise of reasonable care he knew or should have known that an injury could occur;
- c. failing to exercise reasonable care to avoid causing an injury to Plaintiff; and
- d. negligently and carelessly causing the injury to Plaintiff.

15. As a direct result of the negligence of Defendant Schlomer, Plaintiff has sustained severe and permanent injury.

16. The negligence of Defendant Schlomer was the legal cause of the injuries sustained by Plaintiff.

17. Defendant Snake Den Lodge, L.L.C. is liable for the acts and omissions of Defendant Cordie Schlomer in this accident, under the doctrines of *respondeat superior* and/or apparent agency.

18. As a direct and proximate result of the negligence of the Defendants, Plaintiff Gary Myers was seriously and permanently injured in the following particulars:

- a. He suffered complete tears of the right anterior cruciate ligament (ACL) and lateral collateral ligament (LCL) and he has experienced and will continue to experience pain, discomfort and mental anguish;
- b. He has had to undergo arthroscopic ACL reconstruction and open LCL repair surgery; and
- c. He has incurred and may continue to incur medical and hospital expenses for the treatment of his injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter a judgment against Defendants and in favor of Plaintiff as follows:

1. For such sums as may be awarded for Plaintiff's economic and non-economic losses, including disability, disfigurement, pain, suffering, mental anguish, loss of earnings and earning capacity, medical, hospital, and rehabilitation expenses, both past, present and future;
2. For loss of the ability to enjoy life;
3. For costs of this lawsuit including prejudgment interest; and
4. For such other and further relief as may be just and equitable.

Dated this 2 day of Nov, 2009.

GOODSELL QUINN, LLP

BY: 

Terence R. Quinn
246 Founders Park Dr., Suite 201
P.O. Box 9249
Rapid City, SD 57709-9249
Tel: (605) 343-3000
Fax: (605) 343-3251

PLAINTIFF REQUESTS TRIAL BY JURY

BY: 